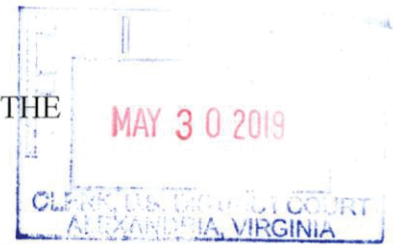


IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division



UNITED STATES OF AMERICA

v.

ANDREW B. POWERS,

Defendant.

Case No. 1:19-mj-252

UNDER SEAL

**AFFIDAVIT IN SUPPORT OF
A CRIMINAL COMPLAINT, ARREST WARRANT, AND SEIZURE WARRANT**

I, Jamie M. Vera, Special Agent of the Federal Bureau of Investigation ("FBI"), being duly sworn, state:

I. Introduction and Agent Background

1. I make this affidavit in support of a criminal complaint charging ANDREW B. POWERS (hereinafter "POWERS") for his role in executing a multi-million dollar fraud scheme targeting the investors in his company, COMMUNICLIQUE, INC. (hereinafter "COMMUNICLIQUE"), and, in particular, for inducing an investor to travel interstate to the Eastern District of Virginia (hereinafter "EDVA") on or about November 29, 2016, in the execution of the scheme to defraud that investor of more than \$5,000 in violation of Title 18 United States Code (U.S.C.) §2314.
2. This affidavit is also submitted in support of an arrest warrant for POWERS.
3. In addition, I make this affidavit in support of a seizure warrant for a 2015 GMC Yukon. Seizure warrants may be issued in this district regardless of where the vehicles are located as 18 U.S. C. § 981(b)(3) authorizes a judicial officer in any district in which a forfeiture action against the property may be filed under section 1355(b) of Title 28, to issue such warrants. A

forfeiture action may be filed under section 1355(b) of Title 28, because criminal acts giving rise to forfeiture occurred in this district.

4. I have been a Special Agent with the FBI since September 2015. I have received basic law enforcement training at the FBI Academy in Quantico, Virginia. I am currently assigned to the FBI's Washington Field Office, where I am responsible for conducting and assisting with securities fraud and investment fraud investigations, including related white-collar and financial crimes. As such, I have participated in investigations involving mail fraud, wire fraud, securities fraud, bank fraud, money laundering, and conspiracy. I have also received additional training in the area of financial crimes. Prior to my employment with the FBI, I worked for over four years in accounting and finance related roles. I am a Certified Public Accountant and a Certified Fraud Examiner.

5. This affidavit is intended to show that there is sufficient probable cause for the requested complaint, arrest warrant, and seizure warrant, and does not set forth all of my knowledge about this matter. The facts and information contained in this affidavit are based on my personal knowledge and information obtained from legal process or from other law enforcement officers. All observations referenced in this affidavit that were not personally made by me were relayed to me by the person(s) who made such observations or in reports that detailed the events described by that person.

II. Background on the Fraud Scheme

6. POWERS, with the assistance of others, has been soliciting investments from various individuals in return for shares of POWERS' company, COMMUNICLIQUE, which was formed in April 2006 as a Delaware corporation, and later registered in Virginia as a foreign corporation. POWERS resided in EDVA until approximately August 2018, when he moved to

California. Between January 2011 and December 2018, POWERS raised over \$20 million dollars from over 40 investors; however, POWERS began raising money as early as 2007. In return for their investments, investors were usually issued shares of common stock in COMMUNICLIQUE, which was documented by "Subscription Agreements" detailing the date of the purchase, the number of shares purchased, the price per share, and the total investment amount. Some investors also received stock certificates for their investments, which were sent to them by mail, usually from the law firm DLA Piper with addresses in both Reston, Virginia and Washington, D.C.

7. In approximately the first half of 2018, POWERS began raising money in the form of loans, issuing convertible promissory notes in return.

8. POWERS, and others working for him, told investors that COMMUNICLIQUE had widely recognized customers, including Airbnb, FedEx, Groupon, Intel, Polycom, Staples, The Hartford, Uber, and Wilmer Hale, among others. POWERS also touted COMMUNICLIQUE as having consistently growing revenue year after year. These representations were documented in emails and investor update reports, sent out to investors by POWERS, which usually included a Profit & Loss (hereinafter "P&L") statement that identified monthly revenues and expenses for a specified period of time. Early on, the reports were being sent out quarterly, but then switched to being sent out on an annual basis. In addition to the yearly updates and P&L statements, POWERS provided investors with various other documentation to include Balance Sheets, Executive Summaries, Valuation Analysis reports, and "slide decks," which displayed logos of the aforementioned companies that POWERS claimed were customers of COMMUNICLIQUE, as well as references to the millions of dollars of revenues that COMMUNICLIQUE allegedly had.

9. For example, on March 8, 2013, POWERS sent an email with the subject:

“CommuniClique 2012 Q4 investor report” to investors@communiclique.com, which stated¹ “CommuniClique investors – Please see the attached quarterly report.” The email contained one attachment titled “CC Shareholder letter Q4 2012,” which included a four-page written summary and a one-page P&L statement for the time period January through December 2012. The written summary stated, in part, “...we are now a \$20M a year revenue company. Not many companies make it to this point, and more importantly, not many companies make it to \$20M the way we have done it.” The summary also stated “\$21.7M in revenue in 2012, 81.5% increase over last year” and “FedEx revenues increase to \$270k per month.” In addition, the summary states “Wilmer Hale and The Hartford continuing to group, usage is up.” The P&L statement shows revenues of \$21,698,559.86 for the twelve-month period, specifically “Federal Express Product” generated \$2,940,000.00 in revenue according to the statement. At least four known investors received these reports.

10. On June 21, 2013, POWERS sent an email with the subject: “CommuniClique Shareholder letter Q1 2013 attached” to investors@communiclique.com, which stated “CommuiClique Investors - Please see the attached report for Q1 2013.” The email contained one attachment titled “CommuniClique Shareholder letter Q1 2013,” which included a three-page written summary and a one-page P&L statement for the time period April 2012 through March 2013. The written summary stated, in part, “The Hartford remains one of our best customers as they expand the voice portion of their collaborative suite” and “FedEx is consistent, \$270k per month continues.” The P&L statement shows revenues of \$22,140,178.05 for the twelve-month

¹ All errors for any quotes were left in the original format.

period, specifically "Federal Express Product" generated \$3,030,000.00 in revenue according to the statement. At least six known investors received these reports.

11. In September 2013, POWERS changed the format from emailing out quarterly reports to instead holding shareholder conference calls. On January 6, 2014, POWERS sent an email with the subject "Q3 2013 financial report" to investors@communiclique.com, which stated "...Here's our Q3 2013 financial report in advance of tomorrows update call..." The email contained one attachment titled "CommuniClique Q3 2013 PandL," which was a one-page P&L statement for the time period October 2012 through September 2013 showing \$26,890,647.69 in revenue for the twelve-month period, specifically "Federal Express Product" generated \$3,210,000.00 in revenue according to the statement. At least four known investors received this P&L.

12. On March 23, 2014, POWERS sent an email with the subject "CommuniClique Q4 2013 report" to investors@communiclique.com, which stated "CommuniClique Investors – Please see the attached financial report for Q4 2013. I'm looking forward to giving you all an overview of the quarter and updating you on this quarter so far tomorrow..." The email contained one attachment titled "CommuniClique Q4 2013 PandL," which was a one-page P&L statement for the time period January through December 2013 showing \$28,755,223.82 in revenue for the twelve-month period, specifically "Federal Express Product" generated \$3,240,000.00 in revenue according to the statement. At least eight known investors received this P&L.

13. In 2016, POWERS reverted back to providing written investor update reports, as he did in previous years. On March 7, 2016, POWERS sent an email with the subject "CommuniClique 2015 investor report" to investors@communiclique.com, which stated "CommuniClique investors – please see the attached report for CommuniClique year end 2015." The email contained one attachment titled "CommuniClique 2015-Investorletter-030716," which

included a four-page written summary, a one-page P&L covering the time period January through December 2015, a nine-page "valuation analysis" from Evergreen Advisors, and a three-page article published by *The Hindu*, which talks about COMMUNICLIQUE. The written summary stated, in part, "We reached \$71.5 million in revenue, a 60% growth over 2014 total revenue which was 60% larger than 2013." The summary also stated "Conservatively, a third party valuation by Evergreen Advisors (see enclosed) placed us at a valuation of \$350 - \$400 million in July of 2015." In addition, the summary stated "We continue to see growth from our key customers including FedEx, Wilmer Hale, Uber and Airbnb." The P&L for 2015 showed total revenue of \$71,587,103.00, which included \$4,320,000.00 of revenue being generated from "Federal Express Product." At least ten known investors received these reports.

14. On March 16, 2017, an email was sent from email address investor-relations@communiclique.com to investors@communiclique.com with the subject "2016 CommuniClique annual report." The email stated "CommuniClique Investors – Please see the attached report summarizing the company's performance for 2016." The email contained an attachment titled "CommuniClique 2016 EOY² Shareholder Report," which included a ten-page written summary, a one-page P&L covering the time period January through December 2016, and a thirteen-page "valuation analysis" by Evergreen Advisors. The written summary stated, in part, "2016 was a stellar year for revenue, as we pushed through the \$100mm mark for the first time. Our \$122mm in revenue was a 72% increase in top line." The summary also stated "The Hartford spent \$55,000 their first year as a CommuniClique customer...In 2016, we invoiced them \$1.76 million..." and "Staples is another good example going from first year revenue of ~\$200,000 and

² Based on the context of this email and my knowledge of the case terminology, I believe "EOY" to mean End of Year.

now, generating nearly \$4 million annually...” The P&L for 2016 showed total revenue of \$121,462,689.53. At least 14 known investors received these reports.

15. According to Evergreen Advisor’s website, “Evergreen Advisors is a leading investment banking and corporate advisory firm focused on assisting emerging growth and middle-market companies in the areas of Investment Banking and Corporate Advisory.” A subpoena was issued to Evergreen Advisors as it related to their business relationship with POWERS and COMMUNICLIQUE. Evergreen Advisors explained that they were attempting to earn COMMUNICLIQUE’s business as a customer, and in doing so, they provided POWERS with “discussion materials.” In response to the subpoena, Evergreen Advisors produced the discussion materials that were provided to POWERS. A review of the materials provided by Evergreen Advisors revealed that the reports POWERS sent out to investors had been altered to state that the reports were valuation analyses, when in reality that is not what the reports were. The cover page of the reports provided by Evergreen Advisors stated “Discussion Materials;” however, the reports that POWERS sent out to investors were altered by removing “Discussion Materials” and replacing it with “Valuation Analysis.” Evergreen Advisors asserted that they never conducted nor provided POWERS with a valuation analysis.

16. Subpoenas were also issued to the following companies: Airbnb, FedEx Corporation, FedEx Office, Groupon, Intel, Polycom, Staples, The Hartford, Uber, and Wilmer Hale. All of these entities provided responses asserting that they were not customers of COMMUNICLIQUE.

17. POWERS has recently made representations to at least one investor and the FBI that the revenues were generated through “channel partners.” During an interview with the FBI in December 2018, POWERS told the interviewing agents, including myself, that IBM and The Nerderly were some of COMMUNICLIQUE’s channel partners. A subpoena was issued to IBM, to